

² The Board notes that appellant submitted additional evidence on appeal and following the February 26, 2021 decision. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

On September 17, 2000 appellant, then a 53-year-old small package and bundle sorter clerk, filed a traumatic injury claim (Form CA-1) alleging that on March 27, 2000 he sustained pain in his right elbow and left hand as a result of repetitive keying and moving mail while in the performance of duty. He stopped work on August 23, 2000. OWCP converted the claim to an occupational disease claim and accepted it for right medial epicondylitis, villonodular synovitis of the left hand, bilateral tenosynovitis of the hands and wrists, and bilateral carpal tunnel syndrome. It paid appellant wage-loss compensation for intermittent disability from work from May 2007 to September 2016. Appellant returned to modified duty on December 11, 2016.

On September 18, 2018 appellant filed claims for compensation (Form CA-7) for intermittent disability from work during the period May 28, 2013 through April 20, 2018.

In a development letter dated November 6, 2018, OWCP requested that appellant provide medical evidence establishing that he was disabled from work due to intermittent disability during the period May 28, 2013 through April 20, 2018. It afforded him 30 days to submit the necessary evidence.

On November 30, 2018 Dr. Eric G. Dawson, an orthopedic surgeon, diagnosed rotator cuff tendinitis with secondary degenerative changes.

By decision dated January 18, 2019, OWCP denied appellant's claim for wage-loss compensation due to intermittent disability during the period May 28, 2013 through April 20, 2018.

Thereafter, OWCP received a report dated November 28, 2018 from Dr. Daniel R. Ignacio, a Board-certified physiatrist, who diagnosed chronic lumbar sprain with neuritis, chronic lumbar disc displacement with radiculopathy, chronic bilateral knee chondromalacia and sprain, chronic pelvic syndrome, and chronic pain syndrome. Dr. Ignacio found that appellant should continue working limited duty. He advised that appellant had been unable to work from May 15 to 26, June 6 to 21 and June 24 to 28, and July 1 to 31, 2013, March 14 to 22, March 29 to May 5, and November 29 to December 15, 2017. In a handwritten addendum dated March 7, 2019, Dr. Ignacio opined that appellant was disabled from work for the periods May 22, 2013, October 3 to November 3, 2017, and March 29 to April 20, 2018.

On November 19, 2019 OWCP received CA-7 forms from appellant dated September 18, 2018 claiming wage-loss compensation due to disability from employment for the periods May 15 to 26, 2013 and October 3 to November 3, 2017.

On November 19, 2019 appellant requested reconsideration. He asserted that he had previously submitted medical evidence supporting the claimed periods of disability. Appellant

further noted that OWCP had omitted two periods from consideration in the January 18, 2019 denial decision, May 15 to 26, 2013 and October 3 through November 3, 2017.

By decision dated February 14, 2020, OWCP vacated in part and affirmed in part its January 18, 2019 decision. It determined that appellant had established entitlement to compensation for total disability for the periods May 28, June 6 to 21, June 24 to 28, July 1 to 31, 2013, and March 14 to 22 and November 29 to December 15, 2017. OWCP further found, however, that he had not established entitlement to wage-loss compensation due to disability for the periods March 29 to May 5, 2017 and March 29 to April 20, 2018.

OWCP subsequently received physical therapy reports, duty status reports (Form CA-17), and medical reports dated February 2020 through February 2021 regarding appellant's current condition.

On February 19, 2021 appellant requested reconsideration. In a February 1, 2021 statement, he again asserted that OWCP had failed to adjudicate his claim for wage-loss compensation due to disability from May 15 to 26, 2013 and October 3 to November 3, 2017. Appellant indicated that he was resubmitting the November 28, 2018 report from Dr. Ignacio in support of his claim.

By decision dated February 26, 2021, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

LEGAL PRECEDENT

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.³ This discretionary authority, however, is subject to certain restrictions. For instance, a request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.⁴ Timeliness is determined by the document receipt date (*i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS)).⁵ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁶

When a request for reconsideration is untimely, OWCP undertakes a limited review to determine whether the request demonstrates clear evidence that OWCP's most recent merit decision was in error.⁷ Its procedures provide that it will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607, if the

³ 5 U.S.C. § 8128(a); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

⁴ 20 C.F.R. § 10.607(a).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020).

⁶ *G.G.*, Docket No. 18-1072 (issued January 7, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁷ See 20 C.F.R. § 10.607(b); *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499 (1990).

claimant's request for reconsideration demonstrates "clear evidence of error" on the part of OWCP.⁸ In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.⁹

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹⁰ The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error. Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error. It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion. This entails a limited review by OWCP of how the evidence submitted with the reconsideration request bears on the evidence previously of record and whether the new evidence demonstrates clear error on the part of OWCP. To demonstrate clear evidence of error, the evidence submitted must be of sufficient probative value to shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision.¹¹

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard. The claimant must present evidence which on its face demonstrates that OWCP made an error (for example, proof that a schedule award was miscalculated). Evidence such as a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error.¹² The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹³

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, as it was untimely filed and failed to demonstrate clear evidence of error.

A request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.¹⁴ As appellant's request for reconsideration was not received until February 19, 2021, more than one year after the issuance of OWCP's last merit decision dated

⁸ *L.C.*, Docket No. 18-1407 (issued February 14, 2019); *M.L.*, Docket No. 09-0956 (issued April 15, 2010). *See also* 20 C.F.R. § 10.607(b); *supra* note 6 at Chapter 2.1602.5 (September 2020).

⁹ *J.M.*, Docket No. 19-1842 (issued April 23, 2020); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁰ *S.C.*, Docket No. 18-0126 (issued May 14, 2016).

¹¹ *C.M.*, Docket No. 19-1211 (issued August 5, 2020).

¹² *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 6 at Chapter 2.1602.5(a) (September 2020).

¹³ *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

¹⁴ 20 C.F.R. § 10.607(a).

February 14, 2020, it was untimely filed. Consequently, he must demonstrate clear evidence of error by OWCP in its February 14, 2020 decision.¹⁵

The underlying issue is whether OWCP properly denied appellant's claim for wage-loss compensation for intermittent disability from work for the periods March 29 to May 5, 2017 and March 29 to April 20, 2018. On reconsideration, appellant asserted that OWCP failed to adjudicate his claim for wage-loss compensation for the periods May 15 to 26, 2013 and October 3 to November 3, 2017. He submitted medical evidence regarding his current condition dated February 2020 through February 2021. As previously noted, to demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹⁶ This evidence, however, is irrelevant to the underlying issue as it does not address whether the appellant was disabled during the claimed periods of March 29 to May 5, 2017 and March 29 to April 20, 2018.¹⁷ Thus, appellant has failed to demonstrate clear evidence of error.

On appeal, appellant asserts that his request for reconsideration was timely filed as demonstrated by a February 2, 2021 certified mail receipt showing delivery to OWCP on February 8, 2021. As explained above, timeliness is determined by the received date in iFECS. As the reconsideration was received on February 19, 2021, it was untimely.¹⁸

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

¹⁵ 20 C.F.R. § 10.607(b); *S.M.*, Docket No. 16-0270 (issued April 26, 2016).

¹⁶ *A.A.*, Docket No. 19-1219 (issued December 10, 2019); *Dean D. Beets*, 43 ECAB 1153 (1992).

¹⁷ *Id.*

¹⁸ *Supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the February 26, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 31, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board